American Freightways, Inc. and Truck Drivers Union, Local No. 407, a/w International Brother-hood of Teamsters, AFL-CIO, Petitioner. Case 8-RC-15675

March 12, 1999

DECISION AND DIRECTION OF SECOND ELECTION

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The National Labor Relations Board, by a threemember panel, has considered an objection to an election held February 6, 1998, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 34 for and 49 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief and has decided to adopt the hearing officer's findings¹ and recommendations as explained below, and finds that the election must be set aside and a new election held. Contrary to our dissenting colleague, we agree with the hearing officer that the Employer engaged in objectionable conduct by soliciting grievances and promising to remedy them.

During the critical period (which began on December 30, 1997, when the Union filed its petition), the Employer conducted a series of small group employee meetings. The hearing officer credited the testimony of two employees that during the meetings they attended Employer representatives asked employees what their problems were. Both employees testified that, prior to the union campaign, the Employer had not conducted small group employee meetings and was not interested in hearing employee complaints.

At one of the meetings attended by employee Terry Coleman, Vice President of Human Resources Stambaugh asked employees what problems they had, and employees replied with their complaints. Problems raised by employees included disparity in work rules and change of runs. Stambaugh listened to the employees' complaints and took notes during the meeting. The hearing officer credited Coleman's testimony that Stambaugh stated, in reply to the complaints, "[W]e would look in to the problems and we would fix them."

Employees again raised their problems and concerns at a subsequent meeting conducted by Employer President Garrison. According to Coleman's credited testimony, Garrison replied that "we would fix the problems, and we don't need a third party to intervene." Our dissenting colleague finds that Stambaugh's and Garrison's statements are not objectionable promises to remedy grievances because they can find no linkage between the statements and any specific subject discussed at the employee meetings. We disagree.

Unlike *Noah's New York Bagels*, 324 NLRB 266 (1997), relied on by the dissent, in which the company asked generally for a "second chance to show what we can do," here the Employer repeatedly stated that it would "fix" the specific complaints the employees themselves identified at a series of group meetings. There is nothing vague or uncertain about such a commitment. It constitutes nothing less than an express promise to grant employees a significant element of what they were seeking to obtain through union representation. We thus agree with the hearing officer's finding that the Employer engaged in objectionable conduct by soliciting grievances during the critical period meetings.

The dissent would find that the Employer had a past practice of soliciting grievances and that the Employer was privileged to continue that practice during the organizational campaign. The Respondent met with employees at several locations in the months after Terry Stambaugh's appointment as vice president of human resources in July 1997. However, so far as the employees involved in this proceeding are concerned, the Respondent conducted a single employee meeting in November. While this meeting occurred outside the critical period, the hearing officer found that it was conducted almost simultaneously with the advent of the Union's organizing activities. Furthermore, in contrast to this single precritical period meeting in November 1997, the Employer held a series of critical period meetings between mid-January 1998 and the February 6, 1998 election. Under these circumstances, we find that the single November meeting does not establish a past practice that provides an adequate justification for the Employer's frequent solicitation of employee grievances during the critical period.

Accordingly, we sustain the Union's objection and direct a second election. See *Carbonneau Industries*, 228 NLRB 597, 598–599 (1977) (employer interfered with employee free choice in the election by promising to "take care of" grievances aired by employees at meetings).

[Direction of Second Election omitted publication.]

MEMBER HURTGEN, dissenting.

The Employer has excepted to the hearing officer's finding that, in meetings with employees during the critical period before the representation election, the Employer solicited grievances and promised to remedy them. I find merit to these exceptions. I would find that the Employer was simply following through with a precritical-period program of addressing employee con-

¹ The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

cerns, with an eye toward rectifying them if such concerns were valid.

Before he was appointed vice president of human resources, Terry Stambaugh served as a consultant to the Employer. In that capacity, he made recommendations about standardizing policy within the Company. After his appointment in July 1997, one of his priorities was to follow through on those recommendations. During the months following his appointment, Stambaugh met with employees at several customer service centers to explain his agenda. He met with the employees involved in this proceeding in November 1997. At this meeting, the employees raised many work-related problems, and the Employer promised to look into them. A followup meeting was planned to address concerns that employees expressed in the November 1997 meeting. In the November 1997 meeting, Stambaugh explained his initiatives to standardize operations and policies at the customer service centers and stated his desire "to get everybody on the same page." Concerning a change in the delivery system, he explained that instituting the hub system was necessary for the evolution of the business.² And, he told the employees that an attendance plan idea was in the development stage and there were no plans as yet to implement such a system.

The petition involved in this case was filed on December 30, 1997. The meeting to follow up on the November 1997 meeting was scheduled before the petition was filed. It occurred on January 10, 1998. After January 10, 1998, the Employer conducted several meetings of small groups of employees.

In the critical-period meetings, employees expressed concern about work rules and policies differing from one location to another, about the loss in income resulting from the institution of the hub system, about a rumor that the Company was planning to implement an attendance policy based on a point system, and about wages, hours, and seniority. Significantly, most of these issues were raised in the November 1997 meeting.

Based on the above, I would find that the Employer, during the critical period, was simply carrying through with a program begun prior to that period.

The hearing officer found particular fault with Stambaugh's repeated statement that he "desired to get everyone on the same page." The hearing officer found that this statement addressed employee concerns regarding the disparity between customer service centers, and that it therefore "constituted a renewed promise of benefit."

However, the fact is that Stambaugh first made this statement in the November 1997 meeting as he was explaining his vision to standardize operations and policies at all customer service centers. When he repeated the statement during the critical period, Stambaugh was replying to employee questions about the differences between customer service centers.

I do not believe that repeating a previously announced desire to standardize company rules, in response to employee complaints about the lack of uniformity between customer service centers, constitutes objectionable conduct.

The majority emphasizes the hearing officer's crediting of testimony that Stambaugh stated he would "fix problems." I would not disturb this finding, but, for the reasons explained below, I cannot agree that this translates to objectionable conduct.

There is no evidence that this statement was linked to any specific topic. Rather, Stambaugh told employees that he could not make any promises regarding wages and benefits because of the union campaign. Indeed, employees at some point stopped asking Stambaugh questions because they could not get any answers. There is no testimony that Stambaugh promised that the Company would change the hub system. Nor is there any testimony about any particular complaint, work rule, policy, or employment condition that Stambaugh promised to change. Thus, although there were complaints about wages, no witness testified that Stambaugh promised to change wages. There were also complaints about hours and seniority, but no testimony that Stambaugh promised to do anything about them either. Nor is there testimony that Stambaugh's "fix-it" statement addressed the attendance plan rumor. Rather, the Employer simply said that the rumor was not true.

In short, the record is insufficient to link the "fix-it" statement to any specific topic discussed during the critical period. Given the record's failure to provide a context for the statement, we would find that the testimony about the statement is too vague to support a finding that Stambaugh promised to remedy any particular grievance. See *Noah's New York Bagels*, 324 NLRB 266, 267 (1997) (record devoid of evidence of "specific promise that any particular matter would be improved" is too vague to support finding of a promise to remedy grievances).³

¹ Although, as the majority notes, the hearing officer found that the November 1997 meeting was conducted almost simultaneously with the advent of the Union's organizing campaign, there is no evidence that the Employer was aware of the Union's campaign at that time.

² The Employer had reconfigured the way goods were transported between customer service centers. This led to a decrease in the miles driven by some of the employees involved in this proceeding. The method of delivery after the reconfiguration was referred to as the hub system.

³ The majority's reliance on *Carbonneau Industries*, 228 NLRB 597, 599 (1977), is misplaced. In that case, unlike here, the company's promise to take corrective action was linked to specific grievances.

Finally, I recognize that the meeting before the critical period was with all employees, while the meetings after that period were with smaller groups. However, this does not contradict the point that all of the meetings were substantively the same. The fact that the size of the

group changed does not render the conduct objectionable.

Accordingly, I would reverse the hearing officer's conclusion and find instead that the Employer did not engage in objectionable conduct. I would, therefore, certify the results of the election.